

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

BILLY H. WARD

PLAINTIFF

V.

NO. 1:98CV261-B-D

TUPELO AUTO SALES, LTD., ET AL.

DEFENDANTS

MEMORANDUM OPINION

This cause comes before the court on the plaintiff's objection to the notice of removal. The court construes the objection as a motion to remand.¹ The defendants' counsel has advised the court that the defendants do not intend to formally respond to the objection but deny that this cause is subject to remand.

The complaint states that "the issues made the basis of this complaint are the sale of an automobile" on July 18, 1997.² The complaint alleges that

the Defendants at all times represented that this vehicle conformed to the uses for which it was designed and intended for, and that the Defendants at no time disclosed to the Plaintiff that the 1997 Dodge Ram had any type of mechanical defect.

The complaint further alleges that the subject vehicle is a non-conforming good and seeks reimbursement of the purchase amount, consequential damages, punitive damages, attorney's fees and court costs. The notice of removal alleges federal question jurisdiction on the ground that the plaintiff brings his claim pursuant to the Magnuson-Moss Warranty–Federal Trade

¹ The plaintiff did not submit a supporting memorandum.

²The notice of removal erroneously alleges: "The Plaintiffs [sic] are seeking damages for personal injuries arising out of an automobile accident which occurred on November 9, 1994." ¶ 2.

Commission Improvement Act [Magnuson-Moss Warranty Act], 15 U.S.C. § 2301 et seq.

Reference to the Magnuson-Moss Warranty Act is made in the complaint as follows:

That the Plaintiff has been forced to employ counsel and file suit in this matter, and that because of such the Plaintiff should be reimbursed by the Defendants for court costs and attorneys fees as provided by the Magnuson-Moss Warranty Act.³

The complaint on its face alleges a federal statutory claim. The plaintiff asserts that the state court has jurisdiction over his claims for breach of express and implied warranties. Without explanation, the plaintiff further asserts that this court has no jurisdiction. State and federal courts have concurrent jurisdiction over claims brought pursuant to the Magnuson-Moss Warranty Act.⁴ However, the Magnuson-Moss Warranty Act requires a minimum amount in controversy of \$50,000 as a jurisdictional prerequisite for actions in federal district court. 15 U.S.C. § 2310(d)(3)(B).⁵ See Saval v. BL LTD., 710 F.2d 1027, 1029 (4th Cir. 1983) (“Federal court jurisdiction, however, is limited by 15 U.S.C. § 2310(d)(3)”; Barr v. General Motors Corp., 80 F.R.D. 136, 138 n.2, 139 n.5 (S.D. Ohio 1978) (the requirements of § 2310(d)(3) must be met before an action may proceed in federal court rather than state court).

³Complaint, ¶ 10. See 15 U.S.C. § 2310(d)(2).

⁴“Aggrieved consumers may sue to enforce rights under the Act in state, 15 U.S.C. § 2310(d)(1)(A), or federal, 15 U.S.C. § 2310(d)(1)(B), court.” Saval v. BL LTD., 710 F.2d 1027, 1029 (4th Cir. 1983).

⁵15 U.S.C. § 2310(d)(3) provides in pertinent part:

(3) No claim shall be cognizable in a suit brought under paragraph (1)(B) of this subsection [allowing suit in federal district court]--

. . . .

(B) if the amount in controversy is less than the sum or value of \$50,000 (**exclusive of interests and costs**) computed on the basis of all claims to be determined in this suit;

. . . .

The removing defendants bear the burden of establishing federal jurisdiction.

Asociacion Nacional De Pescadores A Pequena Escala O Artesanales De Colombia v. Dow Quimica De Colombia S.A., 988 F. 2d 559, 563 (5th Cir. 1993), cert. denied, 510 U.S. 1041, 126 L. Ed. 2d 653 (1994).⁶ Neither the plaintiff nor the defendants address the amount-in-controversy requirement. Since the amount-in-controversy requirement is jurisdictional, the court must *sua sponte* raise the issue. Marathon Oil Co. v. Ruhrgas, 145 F.3d 211, 217 (5th Cir. 1998) (“[the court] is obliged to inquire *sua sponte* whenever a doubt arises as to the existence of federal jurisdiction”) (quoting Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 278, 50 L. Ed. 2d 471, 478 (1977)). Under the general rule, “statutes conferring jurisdiction on federal courts are to be strictly construed, and doubts resolved against federal jurisdiction.” Boelens v. Redman Homes, Inc., 748 F.2d 1058, 1067 (5th Cir. 1984). The court must first consider the type of damages requested in the complaint. Id. at 1069.

The plaintiff’s claim for attorney’s fees must be excluded from the computation of the amount in controversy for jurisdictional purposes. Id. at 1069 (citing Saval, 710 F.2d at 1032-33). The Fifth Circuit explained that “§ 2310(d)(3)[(B)] requires that the amount in controversy be calculated ‘exclusive of interests and costs’” and that attorneys’ fees are costs within the meaning of that section. Id. at 1069.⁷ The plaintiff’s claim for punitive damages may be

⁶Abrogated on other grounds, Marathon Oil Co. v. Ruhrgas, 145 F.3d 211 (5th Cir. 1998) (in a removed action, district court must address contested issue of subject matter jurisdiction before addressing contested issue of personal jurisdiction).

⁷The court in Saval construed § 2310(d)(3)(B) in light of § 2310(d)(2) which provides that a prevailing consumer may recover “as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorneys’ fees based on actual time expended)...” Saval, 710 F.2d at 1033. The court concluded that, consistent with the purpose of § 2310(d) to restrict access to federal courts, “‘cost and expenses’ should be read as one, and that ‘attorneys’ fees’ are

included in the calculation of the jurisdictional amount only if punitive damages are recoverable in a breach of warranty action under the governing state law. Id. The court in Boelens held that the punitive damages claim could not be used to confer jurisdiction since, under the applicable Texas law, punitive damages are recoverable “for the accompanying tort, not for the breach of warranty itself.” Id. at 1070-71. Similarly, under Mississippi law, punitive damages cannot be awarded in this action without proof of an independent tort. Guerdon Indus., Inc. v. Gentry, 531 So.2d 1202, 1209 (Miss. 1988) (citing Fedders Corp. v. Boatwright, 493 So.2d 301, 310-12 (Miss. 1986) (applying the punitive damages standard for breach of contract actions to breach of warranty actions)); Aetna Cas. & Sur. Co. v. Day, 487 So.2d 830, 832 (Miss. 1986) (citations omitted) (punitive damages award requires proof of an intentional wrong, malice, gross negligence or reckless disregard for the rights of others). The complaint in this cause seeks punitive damages but does not allege tortious conduct independent of the breach of warranty allegations and no state law tort claims are asserted in the plaintiff’s objection to removal. In any event, since Mississippi law, like Texas law, “does not allow punitive damages for a breach of warranty per se,” the punitive damages claim cannot be included in the amount in controversy for the plaintiff’s breach of warranty claims. Boelens, 748 F.2d at 1071.

The plaintiff’s claim for reimbursement of the purchase amount falls within the category of damages for economic loss which are recoverable under the Magnuson-Moss Warranty Act and may be used to satisfy the amount-in-controversy requirement. Id. at 1069 (lost investment in subject mobile home and alternative housing costs are recoverable economic loss damages). However, the purchase amount falls short of the \$50,000 minimum and the alleged consequential

included within that unit.” Id. at 1033.

costs are unspecified. It is well settled:

In removal practice, when a complaint does not allege a specific amount of damages, the party invoking federal jurisdiction must prove by a preponderance of the evidence that the amount in controversy exceeds the jurisdictional amount.

St. Paul Reinsurance Co. v. Greenberg, 134 F.3d 1250, 1253 & n.13 (5th Cir. 1998) (citing Allen v. R & H Oil & Gas Co., 63 F.3d 1326, 1335 (5th Cir. 1995)). “The test is whether it is more likely than not that the amount of the claim will exceed [the jurisdictional threshold].” 134 F.3d at 1253 n. 13 (citing Allen, 63 F.3d at 1336). The removing defendants have made no allegation that any consequential damages would amount to \$29,414.71. The court finds that it is apparent from the face of the complaint that it is unlikely that the purchase amount of \$20,585.29 and unspecified consequential damages, “included [sic], but not limited to, travel time and loss of use of the vehicle,” will total \$50,000. See Rose v. A & L Motor Sales, 699 F. Supp. 75, 76 (W.D. Pa. 1988) (“it doesn’t appear that plaintiff has any recoverable consequential damages that would significantly increase her total damages”).⁸ Therefore, the court lacks subject matter jurisdiction over this cause.

For the foregoing reasons, the court finds that this cause should be remanded for lack of federal question jurisdiction. An order will issue accordingly.

THIS, the ____ day of November, 1998.

⁸The plaintiff in Rose allegedly “incurred numerous consequential damages in the form of lost time from work, and other inconvenience experienced while attempting to resolve the difficulties with the [subject vehicle].” 699 F. Supp. 75, 76 (W.D. Pa. 1988).

NEAL B. BIGGERS, JR.
CHIEF JUDGE